S.B. CIVIL WRIT PETITION NO.5325/2007.

The Oriental Insurance Co.Ltd.
Vs.
Smt.Mangi Bai and ors.

Date of order : 12/12/2007.

HON'BLE MR.JUSTICE MOHAMMAD RAFIQ

Shri Digvijay Mantri for the petitioner.

******

This writ petition is directed against the order dated 7/4/2007 passed by the Motor Accident Claims Tribunal, Jhalawar whereby application of the respondent No.1 filed under Order 23 Rule 1 read with Section 151 CPC was allowed.

Learned counsel for the petitioner has challenged the validity of the impugned order dated 7/4/2007 on the ground that the claim petiton should not be allowed to amend so as to permit the claimant to reduce income of the deceased as shown in the original petition from Rs.3500/- to Rs. 3300/- per month and such reduction now made is to bring the claim petition within the purview of Section 163A of the Motor Vehicles Act.

In support of his aforesaid argument, learned counsel for the petitioner has cited the judgment of the Supreme Court in **Deepel Girish Bhai Soni and ors. Vs. United India Insurance Co.Ltd. Baroda : Transport & Accident Cases : 2004 (2) 289** and on the strength of that judgment, argued that proceedings under Section 163A of the Motor Vehicles Act were not

maintainable if the income of the deceased is accepted as Rs.1400/- per month and therefore the amendment was not bonafide.

Having heard learned counsel for the petitioner and perused the impugned-order, I find that all that the learned Tribunal has directed is that he has merely made correction of the monthly income of the deceased and it was open to the petitioner to prove before the Tribunal as to what was the exact monthly income of the decesed as it would be for the claimants to prove. Petitioner was also at liberty to contend before the learned Tribunal as to what would be the effect of the originally filed petition by reduction of monthly income of the deceased from Rs.3500/- per month to Rs.3300/- per month.

I, therefore, do not find any merit in this petition. The same is accordingly dismissed in limine.

(MOHAMMAD RAFIQ), J.

anil/-